

AN ACT

RELATING TO CRIMINAL JUSTICE; ESTABLISHING THE NEW MEXICO SENTENCING COMMISSION; EXPANDING DUTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 9-3-10 NMSA 1978 (being Laws 1977, Chapter 257, Section 11, as amended) is amended to read:

"9-3-10. NEW MEXICO SENTENCING COMMISSION--CREATION--MEMBERSHIP--DUTIES.--

A. There is created the "New Mexico sentencing commission".

B. The New Mexico sentencing commission shall be composed of twenty-three members. Appointed members shall serve at the pleasure of the appointing authority. The commission shall reflect reasonable geographical and urban-rural balances and regard for the incidence of crime and the distribution and concentration of law enforcement services in the state. The commission shall consist of the following individuals or their designees:

(1) the attorney general;

(2) a district attorney appointed by the district attorneys association of New Mexico;

(3) the chief public defender;

(4) two district court judges, one of whom shall be a children's court judge, appointed by the district court judge's association of New Mexico;

(5) a judge from the court of appeals appointed by the chief judge of the court of appeals;

(6) the dean of the university of New Mexico school of law;
(7) the secretary of corrections;
(8) the secretary of public safety;
(9) the secretary of children, youth and families;
(10) a county sheriff appointed by the executive director of the
New Mexico association of counties;

(11) two public members appointed by the governor, one of
whom shall be designated as chairman of the New Mexico sentencing commission by
the governor;

(12) three public members appointed by the president pro
tempore of the senate;

(13) three public members appointed by the speaker of the
house of representatives;

(14) two public members appointed by the chief justice of the
supreme court;

(15) one public member who is Native American and a
practicing attorney, appointed by the president of the state bar association; and

(16) one public member appointed by the governor who is a
representative of a New Mexico victim organization.

C. A majority of the members of the New Mexico sentencing
commission constitutes a quorum for the transaction of commission business.

D. The New Mexico sentencing commission shall:

(1) hold meetings at times and for periods as the commission
deems necessary;

- (2) hire staff as needed to assist the commission in the performance of its duties;
- (3) prepare an annual budget;
- (4) establish policies for the operation of the New Mexico sentencing commission and supervision of the activities of commission staff;
- (5) advise the executive, judicial and legislative branches of government on policy matters relating to criminal and juvenile justice;
- (6) make recommendations to the legislature concerning proposed changes to laws relating to the criminal and juvenile justice systems that the commission determines would improve those systems;
- (7) annually assess, monitor and report to the legislature on the impact of any enacted sentencing standards and guidelines on state and local correctional resources and programs and the need for further sentencing reform;
- (8) when developing proposed sentencing reform:
 - (a) study sentencing models in other jurisdictions;
 - (b) study the Criminal Sentencing Act, the Criminal Code and all other New Mexico statutes relating to criminal law, criminal sentencing, criminal procedure and probation and parole;
 - (c) review past studies or reports regarding proposed changes to the Children's Code, the Criminal Code, the Criminal Sentencing Act or other New Mexico statutes relating to criminal law, criminal sentencing, criminal procedure or probation and parole;
 - (d) study past and current criminal sentencing and release practices and create a statistical database for simulating the impact of various

sentencing policies;

(e) study the full range of prison, nonprison and

intermediate sanctions;

(f) determine the principal purpose for criminal

sanctions;

(g) rank criminal offenses by degree of seriousness;

(h) determine the role of criminal history in making

criminal sentencing decisions;

(i) define dispositional policy that determines when

adult felony offenders are confined in state prisons and county jails or sentenced to nonprison and intermediate sanctions;

(j) establish the length of criminal sentences;

(k) establish the appropriate use of community service and fines;

(l) structure proposed sentencing guidelines to assure consistency in all aspects of criminal sentencing policy;

(m) assess the impact of commission recommendations to modify criminal sentencing policy on the availability of and need for correctional resources and programs;

(n) use the expertise of a national or state organization with experience in sentencing reform; and

(o) present proposed legislation or recommendations regarding sentencing reform to the appropriate legislative interim committee;

(9) monitor any enacted sentencing guidelines with respect to uniformity and proportionality;

(10) conduct research relating to the use and effectiveness of any enacted guidelines, prosecution standards, offense charging, plea bargaining, sentencing practices, probation and parole practices and any other matters relating to the criminal justice system;

(11) serve as a clearinghouse for the systematic collection, analysis and dissemination of information relating to felony offense charges, plea agreements, convictions, sentences imposed, incarceration time actually served and actual and projected inmate population in the state correctional system;

(12) review all proposed legislation that creates a new criminal offense, changes the classification of an offense or changes the range of punishments for an offense and make recommendations to the legislature as to whether proposed changes would improve the criminal and juvenile justice system; and

(13) contingent upon the availability of funding, provide impact estimates, incorporating prison population projections, on all proposed legislation that has the potential to affect correctional resources.

E. The members of the New Mexico sentencing commission shall be paid pursuant to the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance.

F. The New Mexico sentencing commission is administratively attached to the office of the governor."

Section 2. Section 9-3-10.1 NMSA 1978 (being Laws 1994, Chapter 19, Section 2) is amended to read:

"9-3-10.1. AUTHORITY TO REVIEW RECORDS OR INFORMATION--
EXCEPTIONS--RULES.--

A. The New Mexico sentencing commission is authorized to inspect, copy, receive and review all records, data and information in the possession of state, county and local government agencies, except records, data or information that:

(1) is privileged under the rules of evidence;

(2) compromises or tends to disclose any privileged record or information; or

(3) consists of reports, memoranda or other internal documents given to or communications made to a prosecutor or defense attorney in connection with the investigation, prosecution or defense of a criminal case.

B. The New Mexico sentencing commission shall promulgate rules setting forth procedures for inspecting, copying, receiving, reviewing and reporting records, data and information necessary to fulfill its duties. State, county and local government agencies shall assist the commission in obtaining the records, data and information necessary to fulfill the commission's duties. All records, data and information received or obtained by the commission shall have the same status with regard to access or release as when the records, data or information was in the possession of the entity from which the commission received it."

Section 3. Section 9-3-10.2 NMSA 1978 (being Laws 1994, Chapter 19, Section 3) is amended to read:

"9-3-10.2. AUTHORITY TO ACCEPT GRANTS OR DONATIONS.--The New Mexico sentencing commission may, in the name of the state, accept grants, donations or gifts to carry out its functions and purposes."

Section 4. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS DEDUCTIONS.--

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

- (1) for a first degree felony, eighteen years imprisonment;
- (2) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;
- (3) for a second degree felony, nine years imprisonment;
- (4) for a third degree felony resulting in the death of a human being, six years imprisonment;
- (5) for a third degree felony, three years imprisonment; or
- (6) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted of a first, second, third or fourth degree felony or a second or third degree felony resulting in the death of a human being, unless the court alters such sentence pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

C. The court shall include in the judgment and sentence of each person convicted of a first, second, third or fourth degree felony or a second or third degree felony resulting in the death of a human being and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA

1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

- (1) for a first degree felony, fifteen thousand dollars (\$15,000);
- (2) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$12,500);
- (3) for a second degree felony, ten thousand dollars (\$10,000);

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(4) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000); or

(5) for a third or fourth degree felony, five thousand dollars (\$5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners."

Section 5. TEMPORARY PROVISION--SENTENCING REFORM.--Contingent upon the availability of funding, in fiscal years 2004 and 2005, using the expertise of a

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national or state organization with experience in sentencing reform, the New Mexico sentencing commission shall develop sentencing reforms for the state and present recommended reforms to the legislature.

Section 6. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES IN LAW.--

A. On July 1, 2003, all personnel, appropriations, money, records, furniture, equipment and other personal and real property of the criminal and juvenile justice coordinating council shall be transferred to the New Mexico sentencing commission.

B. On July 1, 2003, all contracts and other obligations binding on the criminal and juvenile justice coordinating council shall be transferred to the New Mexico sentencing commission.

C. On July 1, 2003, all references in the law to the criminal and juvenile justice coordinating council shall be deemed to be references to the New Mexico sentencing commission.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, ~~2003~~